
UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF TEXAS

ELDRIDGE NICKSON, ET AL.,

Plaintiffs,

*versus*MELEND A COLE, *et al.*

Defendants.

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CIVIL ACTION NO. 9:18-CV-172

**ORDER OVERRULING PLAINTIFFS' OBJECTIONS AND ADOPTING
THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

Plaintiffs filed this civil rights action pursuant to 42 U.S.C. § 1983, the Americans with Disabilities Act, and the Rehabilitation Act against Melenda Cole, Polk County, Kenneth Hammack, Brent Phillips, Anthony Clevenger, Felecia Jenkins, Douglas Skarpa, Jennifer Wright, and unidentified Defendants.

The court referred this matter to the Honorable Zack Hawthorn, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The magistrate judge recommends dismissing Defendants Hammack, Phillips, Jenkins, Skarpa, Wright, and the unidentified Defendants pursuant to Federal Rule of Civil Procedure 4(m).

The court has received and considered the Report and Recommendation of United States Magistrate Judge, along with the record, pleadings, and all available evidence. Plaintiffs filed objections to the magistrate judge's Report and Recommendation.

The court has conducted a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b). Plaintiffs contend that they were not required to serve Defendants Hammack or Phillips because those Defendants were sued in their official

capacities, not in their individual capacities. Because the official capacity claims against Defendants Hammack and Phillips were previously dismissed, and they were not served with process, Defendants Hammack and Phillips should be dismissed from this action. Plaintiffs claim that Defendants Jenkins, Skarpa, Wright, and the unidentified Defendants were not served with process because discovery was necessary to ascertain their full names. The discovery deadlines have expired. It is clear from Plaintiffs' subsequent pleadings that they have been able to ascertain the full names of the defendants, but they failed to serve them. Therefore, after careful consideration, the court concludes the objections are without merit.

ORDER

Accordingly, Plaintiffs' objections (#17 and #18) are **OVERRULED**. The findings of fact and conclusions of law of the magistrate judge are correct, and the report of the magistrate judge (#15) is **ADOPTED**. Defendants Kenneth Hammack, Brent Phillips, Felecia Jenkins, Douglas Skarpa, Jennifer Wright, and the unidentified Defendants are **DISMISSED** from this action.

SIGNED at Beaumont, Texas, this 10th day of March, 2023.



MARCIA A. CRONE
UNITED STATES DISTRICT JUDGE